

**TEXAS CITY FOREIGN TRADE ZONE CORPORATION**

**FOREIGN TRADE ZONE NO. 199**

**SUBZONE APPROVAL AND**

**TAX EQUIVALENCY PAYMENT AGREEMENT**

This Agreement is made the *13th* day of *December*, 1995, by and among the City of Texas City (the "City"), Texas City Foreign Trade Zone Corporation (the "Grantee"), and PHIBRO ENERGY USA, INC. (the "Subzone User").

**RECITALS**

**WHEREAS**, the City has established the Grantee as part of the City's Foreign Trade Zone Economic Development Program established under Local Government Code §380.001 (the "Program"); and

**WHEREAS**, under the Program, the Grantee has been established to obtain and maintain a foreign trade zone grant to promote economic development in and around Texas City; and

**WHEREAS**, the Program allows private businesses to participate in the Program and receive the benefits of operating under foreign trade zone procedures through the establishment of one or more Subzones under the conditions expressed in the Program; and

**WHEREAS**, Subzone User desires to participate in the Program, and desires that Grantee make an application for a Subzone at the premises of the Subzone User (the "Subzone Property"); and

**WHEREAS**, as a prerequisite to filing an application for a Subzone, the Program requires the execution of a three party agreement obligating the Subzone User to make tax equivalency payments; and

**WHEREAS**, the City and the Grantee have determined that establishing a Subzone at the Subzone Property in accordance with the Program is in the public interest:

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES EXPRESSED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:**

1. Subzone Application. Grantee agrees to file a Subzone Application for the Subzone Property (the "Subzone Application"), subject to Grantee approval of the text of the actual application.

2. Fees and Expenses. The Subzone User agrees to bear all fees and expenses incurred in connection with preparation and filing of the Subzone Application. Fees and expenses include, without limitation, application fees to the Department of Commerce, and reimbursement of outside counsel fees incurred by the Grantee in review and/or processing of the Subzone Application.

3. City Support. The City agrees to provide a support letter to be included in the Subzone Application.

4. Conditions to Operations. The Subzone User agrees to abide by all terms and conditions of the Program, and by the rules and regulations of Grantee. Prior to activation, the Subzone User will execute a Subzone Operators Agreement with Grantee detailing procedures for Subzone operation.

5. Tax Equivalency Payment.

(a) The Subzone User agrees that for each calendar year in which the Subzone Property is activated, the Subzone User will make a Tax Equivalency Payment to Grantee.

- (b) The Tax Equivalency Payment shall be in an amount equal to the difference between (i) the amount of ad valorem taxes that would have been assessed on inventory located at the Subzone Property if the Subzone designation had not been in place for the current year, and (ii) the amount of ad valorem taxes actually assessed for that year on inventory located at the Subzone Property. For purposes of determining the Tax Equivalency Payment, "taxes that would have been assessed" includes all ad valorem taxes which would have been assessed on inventory located at the Subzone Property, regardless of whether or not such inventory is owned by the Subzone User, by all taxing authorities with jurisdiction over the Subzone Property, including without limitation, the City, Galveston County, and applicable school, hospital, and junior college districts. The records of the Galveston Central Appraisal District used in preparing the tax roll shall be deemed conclusive in establishing the amount of taxes that would have been assessed if the Subzone designation had not been in place for the current year.
- (c) On or before October 15 of each year, Grantee shall send to the Subzone User a notice stating the Tax Equivalency Payment required for that calendar year.
- (d) The Tax Equivalency Payment shall be made from the Subzone User to the Grantee on or before November 15 of the year in which the payment is due. All past due amounts shall bear interest at the maximum rate allowable by law.
- (e) If the Subzone User does not timely make its Tax Equivalency payment, the Subzone Property shall be subject to deactivation by the Grantee. Prior to deactivating the Subzone Property, the Grantee shall provide the Subzone User

notice of its intent to deactivate and allow the Subzone User ten (10) days from the date of the notice to pay the past due amount and thereby avoid deactivation. Deactivation shall not affect the Subzone User's liability for payment of the Tax Equivalency Payment.

6. Miscellaneous.

- (a) This Agreement shall extend to and be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and assigns.
- (b) All notices, claims, or demands required or permitted to be given hereunder shall be hand delivered or sent by certified mail, return receipt requested, to the address of each party listed on the signature page.
- (c) In the event any action or proceeding is commenced by any party to (i) determine rights, duties or obligations hereunder, (ii) determine a breach hereof and obtain damages, or (iii) otherwise enforce this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party or parties all costs and expenses, including reasonable attorneys fees and costs.
- (d) This Agreement shall be governed by the laws of the State of Texas, and is performable in Galveston County, Texas.

**ADDRESS FOR NOTICE**

**CITY:**  
1801 - 9TH Avenue North  
P.O. Box 2608  
Texas City, TX 77592-2608  
Attn: City Attorney

**CITY:**  
**CITY OF TEXAS CITY, TEXAS**

By \_\_\_\_\_  
**Charles T. Doyle**  
**Its Mayor**

**GRANTEE:**

1801 - 9th Avenue North  
P.O. Box 2608  
Texas City, TX 77592-2608  
Attn: City Attorney

**GRANTEE:**

**TEXAS CITY FOREIGN TRADE  
ZONE CORPORATION**

By \_\_\_\_\_  
Randy Dietel  
Its Chairman

**SUBZONE USER:**

**PHIBRO ENERGY USA, INC.**  
Texas City Refinery  
Attention: Refinery Manager  
P.O. Box 3429  
Texas City, TX 77592-3429

**SUBZONE USER:**

**PHIBRO ENERGY USA, INC.**  
By Robert M. Flavin  
Robert M. Flavin  
Its Senior Vice President & CFO

GEARY, PORTER & DONOVAN  
A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS

ONE BENT TREE TOWER  
16475 DALLAS PARKWAY, SUITE 500  
ADDISON, TEXAS 75001-6837

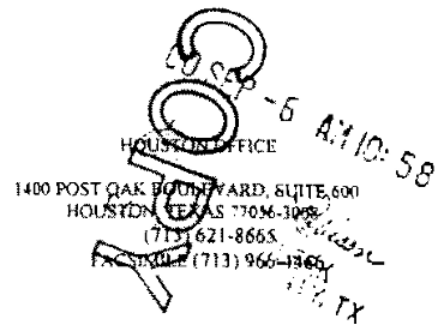
P. O. BOX 700248  
DALLAS, TEXAS 75370-0248

(972) 931-9901  
FACSIMILE (972) 931-9208

DAVID J. KAPLAN

DIRECT DIAL NUMBER  
(972) 349-2104

E MAIL dkaplan@gpd.com



September 5, 2000

Texas City Independent School District  
c/o Mr. Robert Q. Keith  
Keith, Weber & Mosty, P.C.  
P.O. Box 155  
112 N. Nugent  
Johnson City, TX 78636

Re: No. 97CV0755, Basis Petroleum, Inc. v. Galveston  
Central Appraisal District, 56th Judicial District,  
Texas (6315-33910)

Dear Mr. Keith:

The purpose of this letter is to propose certain amendments to the Tax Equivalency Payment Agreement ("Agreement") dated December 13, 1995 by and among the City of Texas City (the "City"), Texas City Foreign Trade Zone Corporation ("TC Corporation"), and Phibro Energy USA, Inc. Valero Refining Company-Texas is the successor in-interest to Phibro Energy USA, Inc. under the Agreement ("Valero"), and the Texas City Independent School District ("TCISD") is a third-party beneficiary under the Agreement.

This letter when executed by the City, TC Corporation, Valero and TCISD will confirm the amendment of the Agreement by the addition of a new paragraph 5(f) thereto, which shall read as follows:

- (1) This paragraph 5(f) shall apply only to the 1997 and 1998 tax years, which tax years when considered together commenced as of January 1, 1997 and ended as of December 31, 1998 (the "Relevant Tax Period");
- (2) This paragraph 5(f) shall apply only to the portion of the Tax Equivalency Payment (the "Applicable TEP") relating to the "taxes that

would have been assessed" by Texas City Independent School District ("TCISD") during the Relevant Tax Period against the assets held by Valero Refining Company - Texas (as successor to Phibro Energy USA, Inc.), as the Subzone User hereunder, during such Relevant Tax Period that qualify as "inventory" in accordance herewith (collectively, the "Relevant Inventory");

- (3) The parties recognize that the 56th Judicial District Court of Galveston County, Texas has ordered that a portion of the appraised values previously attributed to Account Number 8700-0501-3260-010 of Galveston County Appraisal District be removed from the Relevant Tax Period's appraisal rolls of, among others, TCISD because a portion of the Relevant Inventory qualifies for exemption under U.S. federal and Texas state law as foreign trade zone inventory (the "Exempt Relevant Inventory");
- (4) TCISD agrees to transfer tax payments previously made by the Subzone User to TCISD for the Relevant Tax Period with respect to the Exempt Relevant Inventory under Galveston County Appraisal District's Account Number 8700-0501-3260-010 to act as a credit against the Subzone User's payment obligations to TCISD with respect to the Applicable TEP;

TCISD further agrees to provide Subzone User with an additional credit against its Applicable TEP obligations equal to the incremental amount by which TCISD's obligations for school finance recapture payments under the Texas Education Code and other applicable law are reduced as a result of the removal of the Exempt Relevant Inventory values from TCISD's appraisal rolls for the Relevant Tax Period (the "Additional Credit"), which Additional Credit TCISD shall be obligated to make only if, when and to the extent either:

a) TCISD actually receives a refund in the form of a check payable to, or a wire transfer to an account of, TCISD from the State of Texas in the amount of any such reductions to TCISD's school finance recapture obligations for the Relevant Tax Period; or

b) TCISD both

(i) receives written verification from the State of Texas that it has granted to TCISD a credit in the amount of any such reductions to TCISD's school finance recapture obligations for the Relevant Tax Period, which credit the State of Texas will thereafter permit to be applied by TCISD against any amounts owed by TCISD to the State of Texas; and

(ii) makes payments to the State of Texas against which such credit may be applied by TCISD in accordance with applicable law;

- (5) The parties agree that TCISD's obligation to provide the Additional Credit required by this subsection 5(f) (and any actual refunds to the Subzone User necessitated thereby) shall be limited to the Relevant Tax Period and made only if, when and to the extent TCISD receives any applicable refund and/or makes application of any relevant credit to TCISD's payments to the State of Texas, as the case may be, that is directly caused by the reclassification of Relevant Inventory as Exempt Relevant Inventory qualifying for foreign trade zone treatment under applicable U.S. federal and Texas state law; TCISD shall have no obligation to credit the Subzone User's Applicable TEP obligations with any other current or future TCISD income or revenues or other moneys now or hereafter held by or owed to TCISD, including, without limitation, any current or future TCISD ad valorem tax revenues, moneys received by TCISD from the

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U.S. government or the State of Texas, local revenues or TCISD's fund balances;

- (6) TCISD agrees that it will use its reasonable best efforts to assist with the prosecution of any appeal or administrative proceeding involving, or the filing of any necessary forms with, the Texas Education Agency, the Texas Comptroller of Public Accounts or other applicable agencies for the purpose of seeking a redetermination of the results of TCISD's Property Value Study, as well as a redetermination of its school finance recapture obligations, for the Relevant Tax Period with respect to the Exempt Relevant Inventory;
- (7) The Subzone User agrees to indemnify TCISD for any reasonable costs and expenses, including attorneys' fees and expenses, incurred by or charged to TCISD in seeking the redeterminations provided by this subsection(f); and
- (8) The parties hereto agree that TCISD's obligation to provide the Additional Credit against the Subzone User's Applicable TEP obligations required by this subsection 5(f) (and any actual refunds to the Subzone User necessary as a result thereof) shall be made by TCISD as soon as possible, but in no event later than thirty (30) business days, following TCISD's receipt of any applicable refund from the State of Texas and/or TCISD's application of any relevant credit to its payments to the State of Texas, as the case may be.

Although this Agreement will not be filed with the Court unless enforcement of its provisions is required, it is intended by the parties that this document shall constitute a written Agreement pursuant to Texas Rule of Civil Procedure 11.

This letter agreement may be signed in one or more counterparts, but all of which when taken together shall constitute one and the same letter agreement. This letter agreement may not

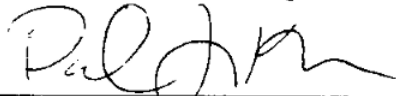
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be amended except pursuant to a writing signed by the City, TC Corporation, Valero and TCISD.

Thank you for your assistance with this matter. Please let me know if you have any questions.

Very truly yours,

GEARY, PORTER & DONOVAN  
A Professional Corporation

By:   
\_\_\_\_\_  
David J. Kaplan  
Attorney for Valero  
Refining Company-Texas

AGREED AS TO FORM AND SUBSTANCE:

\_\_\_\_\_  
Galveston Central Appraisal District  
By: Robert Q. Keith, Attorney for  
Galveston Central Appraisal District  
Date: \_\_\_\_\_

September 5, 2000  
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Thank you for your assistance with this matter. Please let me know if you have any questions.

Very truly yours,

GEARY, PORTER & DONOVAN  
A Professional Corporation

By: \_\_\_\_\_  
David J Kaplan  
Attorney for Valero  
Refining Company-Texas

AGREED AS TO FORM AND SUBSTANCE:

Robert Q Keith  
Galveston Central Appraisal District  
By: Robert Q. Keith, Attorney for  
Galveston Central Appraisal District  
Date: 9-5-00

September 5, 2000

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*[Handwritten Signature]*

By: David J. Kaplan, Attorney for  
Valero Refining Company-Texas

Date: 9/5/00

ACKNOWLEDGED AND AGREED TO AS OF AUGUST \_\_\_\_\_, 2000 by and among:

Valero Refining Company-Texas,  
successor to Phibro Energy USA, Inc.

By: *[Handwritten Signature]*  
Name: ROY G MARTINEZ  
Title: Asst. Sec.  
Date: 11/29/00

City of Texas City, Texas  
By: *[Handwritten Signature]*  
Name: CARLOS GALZA  
Title: MAYOR  
Date: 11-10-00

Texas City Independent School District  
By: *[Handwritten Signature]*  
Name: LUPIN CANTU  
Title: PRINCIPAL  
Date: 11-14-00

Texas City Foreign Trade Zone Corporation  
By: *[Handwritten Signature]*  
Name: RANDY DITTEL  
Title: 11-14-00  
Date: PRINCIPAL

DJK/jlp